



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Bob Wieckowski, Vice Mayor  
Anu Natarajan  
Bill Harrison  
Suzanne Lee Chan

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Melissa Stevenson Dile, Deputy City Manager  
  
Dawn G. Abrahamson, City Clerk  
Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Mary Kaye Fisher, Interim Human Resources Dir.  
Annabell Holland, Parks & Recreation Dir.  
Norm Hughes, City Engineer  
Jill Keimach, Community Dev. Director  
Bruce Martin, Fire Chief  
Jim Pierson, Transportation & Ops Director  
Jeff Schwob, Planning Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Lori Taylor, Economic Development Director  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

# **NOTICE AND AGENDA OF SPECIAL MEETING CLOSED SESSION**

## **FREMONT CITY COUNCIL**

**DATE:** Tuesday, February 2, 2010

**TIME:** 6:30 p.m.

**LOCATION:** Fremont Room, 3300 Capitol Avenue, Fremont

The Council will convene a special meeting. It is anticipated the Council will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding granting authority to its real property negotiators regarding price and terms of payment, as follows:

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS:** This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

APN# 519-1680-038, approximately 48,330 sq. ft., located at 47010 and 47050 Kato Road,  
Owned by Walton CWCA Mission Industrial 27, LLC

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City are—(Which will be represented at the meeting) Randy Sabado, Real Property Manager; Jim Pierson, Transportation and Operations Director and Harvey Levine, City Attorney.

For the Owner—(Which will not be represented at the meeting) Fernando Villa, Esq.

This Special Meeting is being called by Mayor Wasserman.

**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**FEBRUARY 2, 2010**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances*  
*(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Regular Meeting of June 10, 2008, the Work Session and Regular Meeting of September 16, 2008, and the Regular Meeting of September 23, 2008*
- 2.3 **PURCHASE OF RADIO EQUIPMENT**  
*Authorization for the City Manager or Designee to Execute a Purchase Order for the Purchase of Portable and Mobile Radio Equipment for the Fremont Police Department*

*Contact Person:*

*Name: Marilyn Crane*  
*Title: Director*  
*Dept.: Information Technology Services*  
*Phone: 510-494-4802*  
*E-Mail: mcrane@fremont.gov*

*RECOMMENDATION: Authorize the City Manager or designee to execute a purchase order with Motorola, Inc., in an amount not to exceed \$1,801,303 for the purchase of radio equipment for the Fremont Police Department.*

### **3. CEREMONIAL ITEMS**

3.1 Certificate of Appreciation to AT&T Foundation in Recognition of a \$20,000 Grant for the City's Infant Toddler Program

3.2 Proclamation: League of Women Voters 90<sup>th</sup> Anniversary Celebration

### **4. PUBLIC COMMUNICATIONS**

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None.

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

### **5. SCHEDULED ITEMS – None.**

### **6. REPORT FROM CITY ATTORNEY**

6.1 Report Out from Closed Session of Any Final Action

### **7. OTHER BUSINESS**

7.1 EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Property Located at 47010 and 47050 Kato Road. All Property Rights Required are Needed for the Mission Boulevard Widening Project, and the Warren Avenue Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Real Property	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

RECOMMENDATION:

1. Conduct a hearing.
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisition of the subject properties, and authorize the commencement of eminent domain proceedings.

7.2 PAVEMENT CONDITION UPDATE

Update on the City's Pavement Condition and Summary of a Statewide Local Streets and Roads Assessment

Contact Person:

Name:	Connie Wong	Norm Hughes
Title:	Senior Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4782	510-494-4748
E-Mail:	cwong@fremont.gov	nhughes@fremont.gov

RECOMMENDATION: Receive update of and comment on the City's Pavement Condition and receive summary of a Statewide Local Streets and Roads Assessment.

**8. COUNCIL COMMUNICATIONS**

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointment of Adele Jaimes to the Library Advisory Commission

Appointment:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Library Advisory Commission	Adele Jaimes	December 31, 2013

8.2 Oral Reports on Meetings and Events

**9. ADJOURNMENT**



REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING

FEBRUARY 2, 2010

## **\*2.3 PURCHASE OF RADIO EQUIPMENT**

### **Authorization for the City Manager or Designee to Execute a Purchase Order for the Purchase of Portable and Mobile Radio Equipment for the Fremont Police Department**

#### **Contact Person:**

Name: Marilyn Crane  
Title: Director  
Dept.: Information Technology Services  
Phone: 510-494-4802  
E-Mail: mcrane@fremont.gov

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**Executive Summary:** The analog portable and mobile radios used by the Fremont Police Department have reached the end of their useful life and are not compatible with the new federal P-25 radio standard. Staff conducted extensive research and determined that Motorola provides the best overall product selection to meet the identified radio needs for the Police Department. Staff recommends that the City Council authorize the City Manager or his designee to execute a purchase order with Motorola, Inc., in an amount not to exceed \$1,801,300 (includes sales tax and trade-in of existing equipment) for the purchase of mobile and portable radio equipment by piggybacking on Contra Costa County's competitively bid Project P-25 Professional Grade Portable Radios Contract.

**BACKGROUND:** The Fremont Police Department is using portable and mobile radios that were purchased in 1998. These radios are now over ten years old, have reached the end of their useful life, and are not P-25 compliant, a Federal Communications Commission (FCC) standard mandated in 2006. In addition, the current radios operate on an analog radio system supported and maintained by Alameda County. The City Council approved the City's participation in the East Bay Regional Communications System Joint Powers Authority (EBRCSA) in July 2007 to build an interoperable digital radio communications system for cities in Alameda and Contra Costa counties. The current radios will not work on this new digital radio system, which is expected to be operational in 2012/13.

Sprint/Nextel will be re-banding the 800 MHz radio spectrum used by the current Alameda County radio system. As part of the FCC decision to allocate this radio spectrum to Sprint/Nextel, Sprint/Nextel is responsible for reprogramming radios for agencies across the country that use frequencies in this spectrum range at no cost to the agencies. It is expected that this reprogramming for the City of Fremont will take place within the next one to two months. By purchasing radios at this time, the cost for reprogramming will be paid by Sprint/Nextel. The Police Department will also have P-25 compliant radios that will work on the existing analog system and on the new EBRCSA digital radio system.

Pricing for the radio equipment was obtained using the authority granted in the Fremont Municipal Code Chapter 9, Section 2-9702, that authorizes the City to enter into a contract for the acquisition of personal property based upon the terms of an agreement between the contractor and another public agency without utilizing a formal solicitation process. This method of procurement is commonly referred to as "piggybacking" and is designed to yield optimal pricing due to economies of scale. The process also allows staff to choose a product that has proven to best meet the City's equipment needs. Based on City experience and research, the Motorola portable and mobile radios best meet these needs.



**DISCUSSION/ANALYSIS:** The City of Fremont Radio Project Team conducted extensive research to determine the best radio product to purchase for the Police Department. The following radio manufacturers were reviewed: Kenwood, Thales, Midland, Guardian, Harris, and Motorola. Staff attended several vendor shows specifically focused on public safety communication products. After narrowing down the products based on industry standards related to the identified needs for the Police Department, the Project Team met with manufacturer representatives from Harris, Thales, and Motorola. Based on the research, staff determined that Motorola provides the best overall product selection for both mobile and portable radio needs for the Police Department. Most of the other manufacturers have limited product lines that meet the FCC standards of P-25. In addition, the Motorola portable radios are lighter in weight and less bulky than other manufacturers' radios.

The Fremont Police Department is highly advanced with technology and data systems. The variety of products manufactured by Motorola complements the efforts of the Police Department and the City to continue advancing data and communication abilities, meeting the goals of improved and expanded interoperability with other agencies in the region. The product line of Motorola mobile and portable radios allows for more strategic purchase planning that meets the specific needs and uses within the Police Department. Motorola products also allow for seamless transition from the current older Motorola radios used by the Police Department.

Contra Costa County issued a competitive bid to radio equipment vendors for portable and mobile radios that resulted in Contra Costa County's Project P-25 Professional Grade Portable Radios Contract, Bid Number 0904-018. The specifications in the bid meet the criteria for the portable and mobile radios needed by the City. Contra Costa County received eight responses to the bid and issued purchase orders to seven vendors: Motorola, EF Johnson, Harris, Thales, Dailey-Wells (M/A-COM), Hi-Dessert (M/A-COM), and Silverado (Bendix-King). The awards differed by vendor in that the purchase orders issued to only two vendors—Motorola and EF Johnson—included the complete series of portable and mobile radios specified across three tiers in each category. The purchase orders issued to the remaining vendors were for a single mobile or portable radio.

Contra Costa County's contracts leverage pricing based on its large purchase volume. Allowing other public agencies to piggyback onto their contracts further increases purchase volume and thereby lowers prices. Staff requested a quote from Motorola and received pricing that is slightly lower than the pricing offered in the Contra Costa County's Project P-25 Radios Contract. As a result, the City has the opportunity to obtain pricing for the Motorola portable and mobile radios that is better than what could be obtained by utilizing the City's conventional solicitation process. The pricing includes a three year warranty covering parts.

By using the competitively bid Contra Costa County contract, the City is able to secure the best available pricing for the digital Motorola XTS2500 and XTS5000 portable radios and the XTL5000 mobile radio, the same radios that the Fremont Fire Department recently acquired for its radio needs. These models are the same radio that the City specified for purchase in the Citywide Communication Upgrade Project (SP180) for Fire, Police, Maintenance, Recreation, Building Inspection, Construction, and Landscape.

The Police Department conducted a survey through the California Police Chiefs Association and all but one of the 80 agencies who responded assign radios to individual personnel for the duration of the

individual's career. This practice results in a higher level of accountability and a significant reduction in maintenance and repair costs. Because of the favorable pricing, staff proposes to purchase a total of 265 portable radios, an increase of 74 additional portable radios, so that each sworn officer and Community Service Officer in the Police Department is assigned a radio rather than checking out a pooled portable radio for each shift. Pool radios will still be used for Police reserve officers, CARE volunteers, Explorers, and a small spare supply. Funding for these additional radios is included in the U.S. Department of Justice COPPS grant. Purchase of the portable and mobile radios will complete Police Department needs under the Citywide Communication Upgrade Project.

**FISCAL IMPACT:** The total cost for the portable and mobile radios is not-to-exceed \$1,801,303. The cost breakdown for the equipment is as follows:

<b>Quantity</b>	<b>Description</b>	<b>Total</b>
25 each	Portable Radio, Motorola Astro Digital XTS2500, Model II	\$ 64,650
240 each	Portable Radio, Motorola Astro Digital XTS5000, Model II	\$ 743,760
50 each	Batteries, Spare	\$ 3,650
70 each	Single Charger	\$ 9,170
11 each	6-Bank Multi-Charger, with Battery Conditioner	\$ 11,737
16 each	6-Bank Multi-Charger	\$ 9,968
168 each	Mobile Radio, Motorola Astro Digital XL5000	\$ 730,296
16 each	Motorcycle Option	\$ 4,048
38 each	Investigations Undercover Vehicle Accessories	\$ 2,584
16 each	Console Base Station, Motorola XTL5000	\$ 91,392
	Subtotal	\$1,671,255
1 lot	Freight	No Charge
	Sales Tax @ 9.75%	\$ 162,948
	Subtotal	\$1,834,203
	LESS: Trade-In, Existing Motorola Portable and Mobile Radios	(\$ 124,600)
	Contingency – 5%	\$ 91,700
	<b>TOTAL NOT-TO-EXCEED COST</b>	<b>\$1,801,303</b>

There is funding in the amount of \$367,040 from the U.S. Department of Justice COPPS Office grant, Account 159.2109.7320, for the purchase of 74 additional portable radios and the other radio equipment. There is sufficient funding in the adopted CIP Budget for FY 2009/10 under the Citywide Communication Upgrade Project (Account 501PWC8673) for the balance of the equipment costs.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or designee to execute a purchase order with Motorola, Inc., in an amount not to exceed \$1,801,303 for the purchase of radio equipment for the Fremont Police Department.

## **6.1 Report Out from Closed Session of Any Final Action**

## 7.1 EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)

**Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Property Located at 47010 and 47050 Kato Road. All Property Rights Required are Needed for the Mission Boulevard Widening Project, and the Warren Avenue Grade Separation Project**

### **Contact Person:**

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Real Property	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

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**Executive Summary:** The purpose of this report is to recommend that the Council adopt a Resolution of Necessity authorizing the filing of eminent domain action for the property located at 47010 and 47050 Kato Road, which is needed for the Warren Avenue Grade Separation Project (PWC8074).

**BACKGROUND:** The I-880/Mission Boulevard (Route 262) Interchange Reconstruction Project is a joint project of the City of Fremont, Alameda County Transportation Authority and Caltrans. This project will provide a critical link to I-880 connecting commercial areas in the City, and improve traffic flow by separating local streets, regional traffic and mass transportation movements.

The Interchange Reconstruction project is divided into three phases. Phase 1A included the widening of I-880 between the Interchange and Dixon Landing Road, all of the ramps to and from Mission Boulevard and I-880, and the extension of East Warren Avenue over I-880 to connect to West Warren Avenue. This phase was completed in June 2009.

Phase 1B includes the widening of Mission Boulevard between I-880 and Warm Springs Boulevard, as well as the replacement of ramps at Mission and Kato Road that were removed as part of Phase 1A. Phase 2 is a grade separation project that will depress Warren Avenue under two Union Pacific Railroad (UPRR) tracks between Kato Road and Warm Springs Boulevard immediately adjacent to, and south of Mission Boulevard. The eastern UPRR track is now owned by the Santa Clara Valley Transportation Authority (VTA) and the corridor will be used for the Silicon Valley Rapid Transit (BART) project. A third element of work, separate from Phases 1B and 2, needed by VTA, involves modifying truck access and freight access to a private truck rail materials transfer business currently located on VTA and UPRR property within the right-of-way.

The Warren Avenue Grade Separation (Phase 2), the relocation of freight facilities, and the widening of Mission Boulevard (Phase 1B) are tied together by the UPRR track realignment required for each project and, therefore, the three must be closely coordinated and designed by a single entity.

These three projects (Phase 1B, Mission widening; Phase 2, Warren Grade Separation; and the Truck-Rail modification) are collectively known as the Mission/Warren/Truck-Rail, or MWT, Project. There are now four agencies involved in the MWT Project: Caltrans, ACTA, the City and VTA. Based on

agreements between these agencies, VTA is the project manager of the MWT Project, and manages the final design, right-of-way acquisition, utility relocation, and construction efforts. The City is performing most of the right-of-way acquisition for the MWT Project.

The MWT Project requires property and property interests from eight private property owners, in addition to a variety of parcels from public property owners such as VTA and Alameda County Flood Control and Water Conservation District. In 2009, the City was able to reach an agreement with three of the eight private property owners. On November 3, 2009, the City Council approved a resolution of necessity to file eminent domain actions for three of the remaining five private property owners (agreements have now been reached with two of those owners). The City has not been able to reach an agreement with two of the remaining private property owners, and with this report staff recommends Council adopt a Resolution of Necessity to acquire the necessary property and property interests from one of these owners. Staff will return on March 23, 2010 with a request to adopt a resolution of necessity on the remaining one property, if needed.

**DISCUSSION/ANALYSIS:** Staffs from ACTA, VTA, Caltrans and the City have entered into a Memorandum of Understanding (MOU) to document the roles, responsibilities, costs and funding for the MWT Project. The MOU is consistent with all prior funding agreements for the Project and calls for the City to contribute \$23.659 million to the MWT Project. This funding is made up of \$14 million of Redevelopment funds previously committed to Phases 1B and 2 of the I-880/Mission Interchange Project, and \$9.659 million of City savings from Phase 1A of the Interchange Project. In addition, the City has committed \$5 million from the "Bridge Benefit District" account, "Fund 188", as the City's future construction contingency should project costs increase.

Although the MWT Project is fully funded, VTA and Fremont are the only two agencies with funding currently available for right-of-way acquisition and utility relocation, with the exception of \$2.3 million of Caltrans utility cost savings from Phase 1A. All other funding to be contributed by Caltrans and ACTA are future State funds that will be used for construction. The major portion of this future funding is from the East-West Connector Project moving forward, allowing \$42.35 million in Route 84 excess land sale proceeds to be allocated to the MWT Project. The City has entered into a Right-of-Way Acquisition and Utility Relocation Funding Agreement with VTA and ACTA to provide its share of the costs of these phases for the MWT Project. Based upon this agreement, the City's contribution will not exceed \$10,313,476 without a written amendment to the agreement.

Pursuant to the agreements between the parties, VTA is managing the overall right-of-way acquisition effort, and Fremont is assisting VTA with these duties. Fremont Real Property staff will be the lead on most of the right-of-way acquisition for the Warren Avenue Grade Separation and Mission Boulevard Widening components. VTA will lead the property acquisition efforts with UPRR for all Project components. All Fremont costs, including staff, consultants and legal costs, will be billed to VTA and reimbursed from the Project budget. VTA will manage all aspects of the utility relocation efforts. The City will issue letters to all affected utility companies located within the City's Warren Avenue right-of-way directing them to relocate.

On June 9, 2009, the City Council authorized staff to make offers based upon the approved appraised values to the eight private property owners. The formal offers to purchase the needed right-of-way were

transmitted to the property owners in June and July of 2009, and seven offer packets for UPRR were given to VTA to transmit to UPRR.

Negotiations have been ongoing with the private property owners and their representatives, but mutually acceptable agreements have not yet been reached with two property owners. Discussions will continue with all owners in hopes of negotiating agreements; however, to meet the current construction schedule of fall 2010, the City Council needs to adopt a Resolution of Necessity to acquire the necessary right-of-way.

**THE SUBJECT PROPERTY:** On July 22, 2009, the City's formal written offer to purchase the property rights was transmitted to the private property owner's representative. Subsequent to the offer, a design change reduced the square foot area required for the public service easement. A revised appraisal was requested to reflect the reduction of the Public Service Easement. On November 10, 2009, the City's revised formal written offer to purchase the required property rights was transmitted to the private property owner's representative. Negotiations have been ongoing with the private property owner and its representatives, but a mutually acceptable agreement has not been reached. To secure the right-of-way necessary to meet the project construction schedule, staff requests that the City Council consider the adoption of a Resolution of Necessity authorizing the commencement of eminent domain proceedings for the subject property.

The property that is the subject of this proposed Resolution of Necessity is as follows:

- 1) **Walton CWCA Mission Industrial 27, LLC** – This property is located at 47010 and 47050 Kato Road, Fremont, CA 94538 – Assessor Parcel Number 519-1680-038. The property is owned by Walton CWCA Mission Industrial 27, LLC, a Delaware Limited Liability Company. The property consists of an 11.49-acre site improved with two (2) R&D/Industrial buildings totaling approximately 157,925 s.f. built in 1984. Five (5) parcels are required for the Project: 1) a small 150 s.f. fee area is required for retaining wall reinforcement and to conform the site at this location to City standards for street and sidewalk geometrics; 2) a 9,635 s.f. Public Service Easement (PSE) for temporary tiebacks to be used during the construction of a Deep Soil Mix (DSM) wall and relocation of communication and electrical lines; 3) a 36,908 s.f. Temporary Construction Easement (TCE) for construction activities; 4) a 228.56 linear foot Restricted Access Easement (RAE) for restricting access onto Warren Avenue; and 5) a 1,406 s.f. Storm Drain Easement (SDE) to connect to existing facilities. Acquisitions are from the north area of the site, in the parking lot and landscaped setback. The impacted areas are improved with asphalt and striped parking. Nominal landscape improvements are impacted, and will be replaced as part of the Project. The needed real property interests and the impact of the project on the landscaping are shown in the attached Exhibit "A."

**THE PROPOSED RESOLUTION OF NECESSITY:** Council adoption of a Resolution of Necessity, by four-fifths vote with the following findings, based on the evidence noted below, is required for the initiation of the proposed eminent domain action:

**1. The public interest and necessity require the proposed project.**

The need and necessity of the proposed project is consistent with the City's long term General Plan. Traffic study findings conducted prior to design of the project support the Warren Grade Separation project. A significant amount of traffic utilizes Warren Avenue to access Mission

Boulevard and I-880, and with the completion of Phase 1A of the project, Warren Avenue is now a key connector between the east and west sides of I-880.

With the existing at-grade crossing, train traffic frequently blocks vehicular traffic, causing significant congestion along Warren Avenue and Kato Road. The project as proposed will eliminate the existing at-grade railroad/street crossing at Warren Avenue. Train blocking and crossing closures due to train traffic will therefore be avoided. The project will result in improved traffic flow on Warren Avenue, Kato Road and nearby cross-streets, and alleviate traffic congestion in the City.

**2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.**

City staff has been studying and working with VTA, Caltrans and ACTA on alternative designs for the Warren Avenue Grade Separation project. A matrix of alternative design configurations for the Grade Separation of the Warren Avenue portion of the project was considered, including a railroad overpass or underpass. One such alternative considered leaving the street at-grade and depressing the railroad tracks as a design alternative. However, this alternative is not viable. Union Pacific railroad (UPRR) does not support this alternative, and the City has no authority to force UPRR to agree to depressed rails. Even if UPRR were to agree to the depressed rail alternative, the future BART extension tracks would also have to be depressed and the cost of clearance and operational requirements would have significant impacts to the City's operating right-of-way. The Project as planned will thus be a benefit to the residents of the City and the region as a whole, while impacting only eight private property owners.

**3. The property described in the resolution of necessity is necessary for the proposed project.**

As noted, numerous alternatives for the Project were studied, and it was determined that the Project as planned provided the greatest benefit to the residents of the City and the region as a whole. The noted acquisitions are necessary for the Project as planned. The City is required by State law to conform the parcels back to the best functional utility so that the property owners are not left with a landlocked or limited parcel.

**4. The offer required by Government Code Section 7267.2 has been made to all owners of record.**

Staff made the required written offer to the representative of the owner of record based on an approved appraisal of the fair market value of the property and property interests necessary for the Project on July 22, 2009. Due to a reduction in the square foot area of the needed public service easement, staff made a revised offer on November 10, 2009. The offers included a written statement containing detail sufficient to indicate the basis for the offer as required by Government Code section 7267.2, and an informational pamphlet setting out the eminent domain process and the property owner's rights. Written Notices of the City's Intent to Pass a Resolution of Necessity, setting forth the date, time and location of the City Council meeting to consider adopting a Resolution of Necessity were mailed to the owner of record, and its representatives and counsel on December 17, 2009.



**FISCAL IMPACT:** As noted in the Background section of this report, the City has entered into a Right-of-Way Acquisition and Utility Relocation Funding Agreement with VTA and ACTA to provide its share of the costs of these phases for the Mission I-880/Warren Grade Separation and Truck Rail Relocation (MWT) Project. Based upon this agreement, the City will be 100% responsible for the fee, restricted access easement and storm drain easement for the Walton property. VTA's right-of-way share for this particular parcel is 50% of the temporary construction easement and 8% of the public service easement. The prorated share of the cost is based on the impact of each agency's project on the subject parcel. The City's total contribution will not exceed \$10,313,476 without a written amendment to the agreement.

Staff recommends that the City Council adopt the proposed Resolution of Necessity based on the above findings and information.

**ENVIRONMENTAL REVIEW:** The Warren Grade Separation project is statutorily exempt from the California Environmental Quality Act because it will eliminate existing railroad grade crossings. A Notice of Exemption for the project was filed by the City with the Alameda County Clerk on July 3, 2002.

A Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA) and a Negative Declaration (ND) under the California Environmental Quality Act (CEQA) were prepared and approved for the Route 262/Warren Avenue/I-880 Interchange Reconstruction and I-880 Widening Project. The FONSI was approved by FHWA on January 16, 2002 and the ND was approved by Caltrans on January 3, 2002.

In addition to the improvements on I-880, the environmental document included construction on Route 262 from I-880 to Warm Springs Boulevard. The work identified included removal of the two rail bridges and replacing them with a single bridge, widening Route 262, and relocating ramps on Route 262.

**ENCLOSURES:**

- [Draft Resolution](#)
- [Location Map](#)
- [Aerial photograph with Right-of-Way Acquisition Areas \(Exhibit A\)](#)

**RECOMMENDATION:**

1. Conduct a hearing.
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisition of the subject properties, and authorize the commencement of eminent domain proceedings.

## 7.2 PAVEMENT CONDITION UPDATE

### Update on the City's Pavement Condition and Summary of a Statewide Local Streets and Roads Assessment

#### Contact Person:

Name:	Connie Wong	Norm Hughes
Title:	Senior Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4782	510-494-4748
E-Mail:	cwong@fremont.gov	nhughes@fremont.gov

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**Executive Summary:** Staff will provide an update to Council on the status of the City's pavement condition based on a pavement survey completed in September 2009. The status will outline the maintenance backlog and discuss the consequences of current funding levels. Staff will also provide a summary of the Statewide Local Streets and Roads Needs Assessment study completed in October 2009.

**BACKGROUND:** In order to maintain certification and eligibility to receive STIP funding, the City must inspect the pavement condition of all arterial and collector routes every two years and of all streets every five years. This report reflects the five-year "all streets" inspection. The data from the inspection work is used to determine the Pavement Condition Index (PCI) and establish pavement maintenance and rehabilitation strategies for the City. The last inspection of "all streets" was completed in 2004. On January 13, 2009, City Council authorized a service agreement with Nichols Consulting Engineers, Chtd., for pavement condition surveys and analysis for all streets as required to maintain the certification. The pavement inspection survey was completed in September 2009. Staff will present the results of the survey, discuss the maintenance backlog and the consequences of the current funding levels.

The California State Association of Counties, the League of California Cities and other agencies recently sponsored a study to assess the condition of the State's local streets and roads, determine the cost to bring the streets to a Best Management Practices condition, and quantify the funding shortfall based on existing revenues. The study was completed in October 2009. Staff will also be presenting a summary of this statewide assessment.

**DISCUSSION/ANALYSIS:** The City's pavement survey, completed in September 2009, analyzed 493 miles of roadway, consisting of 136 miles of arterials, 111 miles of collectors and 246 miles of residential streets. The survey showed the overall pavement condition index, or PCI, is 64, which indicates the network overall is in "Fair" condition. A newly constructed street would have a PCI of 100, while a completely failed street would have a PCI of 10 or less. The survey further indicated that 74.7% of the network is considered to be in "good" or "fair" condition.

The statewide assessment surveyed all of California's 58 counties and 478 cities and information was collected from more than 93% of the State's local streets and roads. Local streets and roads comprise of 81% of the road mileage in the State. The survey showed that the average statewide PCI is 68.

The City's PCI has been falling steadily in recent years as the funding levels for street maintenance fall short of the maintenance needs due to the ongoing budget challenges and economic conditions that have decreased the amount of resources available for street maintenance. Staff continues to pursue street maintenance funding opportunities, recognizing the importance of maintaining the City's investment in its infrastructure. One such funding opportunity is the second Economic Stimulus Bill currently being considered in Congress. This bill includes \$40 billion in new funds for surface transportation. Staff responded to a request for proposal in January 2010 to the Congestion Management Agency (CMA) for \$10 million of this stimulus funding for street maintenance. Once this bill is signed, staff will return to Council to appropriate the actual funding amount allocated to the City for street maintenance.

**FISCAL IMPACT:** The report by Nichols on the City's pavement condition also provided "what-if" analyses at different funding levels: current funding levels, funding level to maintain current pavement condition, and funding level at an unconstrained budget. The report finds that: 1) At the current CIP funding level of \$4.8 million per year plus the ARRA (American Recovery and Reinvestment Act) funding of \$5.9 million appropriated and expended in 2009 and Prop 1B funding of \$6.4 million already appropriated and to be expended by 2012 for street maintenance, the condition of the network will deteriorate to a PCI of 50 in ten years. In addition, the maintenance backlog will increase from \$169.2 million in 2009 to \$446.9 million in 2018. 2) To maintain the current PCI of 64, an annual budget of \$15.5 million is required for street maintenance. At this funding level, the maintenance backlog will increase from \$164.2 million in 2009 to \$304.7 million in 2018. 3) To achieve the optimum PCI of 83, the ten-year pavement needs are \$336 million. One hundred percent of the network will then be in the "good" condition category. In the meantime, the maintenance backlog would be significantly reduced throughout the ten-year cycle and completely eliminated by 2018.

The statewide assessment indicates that, at current funding amounts, the statewide PCI is projected to deteriorate from 68 to 58 in 10 years, and further to 48 by 2033. Based on the results of the study, approximately \$51.7 billion of additional funding over 10 years is needed to bring the pavement condition of the State's local streets and roads to a level where the taxpayer's money can be spent at a Best Management Practices (BMPs) level where roads need less costly preventative maintenance treatments (slurry seals, chip seals and thin overlays) instead of more costly rehabilitation and reconstruction.

**ENCLOSURE:** None

**RECOMMENDATION:** Receive update of and comment on the City's Pavement Condition and receive summary of a Statewide Local Streets and Roads Assessment.

## 8.1 Council Referrals

### 8.1.1 MAYOR WASSERMAN REFERRAL: Appointment of Adele Jaimes to the Library Advisory Commission

**Appointment:**

*Advisory Body*

Library Advisory Commission

*Appointee*

Adele Jaimes

*Term Expires*

December 31, 2013

**ENCLOSURE:** [Commission Application](#)

## 8.2 Oral Reports on Meetings and Events

## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC .....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF .....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<b><i>Date</i></b>	<b><i>Time</i></b>	<b><i>Meeting Type</i></b>	<b><i>Location</i></b>	<b><i>Cable Channel 27</i></b>
February 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 16, 2010	TBD	Work Session	Council Chambers	Live
February 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 16, 2010	TBD	Work Session	Council Chambers	Live
March 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 30, 2010 (5 <sup>th</sup> Tuesday)		No City Council Meeting		
April 6, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 13, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 20, 2010	TBD	Work Session	Council Chambers	Live
April 27, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 3, 2010	4:00 p.m.	Joint City Council/FUSD Board Meeting	Council Chambers	Live
May 4, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 11, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 18, 2010	TBD	Work Session	Council Chambers	Live
May 25, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live